

Andrew J. Schwaba (NC Bar No. 36455)
SCHWABA LAW FIRM, PLLC
aschwaba@schwablaw.com
212 South Tryon Street, Suite 1725
Charlotte, NC 28281
(704) 370-0220
(704) 370-0210 (fax)

Edward H. Nicholson, Jr. (NC Bar No. 36123)
NICHOLSON LAW FIRM, P.A.
nicholsonshumaker@att.net
212 South Tryon Street, Suite 1725
Charlotte, NC 28281
(704) 223-2406 (telephone)

Class Counsel

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

EFREN DELGADO

Plaintiffs,

v.

THE ALLSTATE CORPORATION,
ALLSTATE INDEMNITY
COMPANY, ALLSTATE
INSURANCE COMPANY,

Defendants.

Case No. _____

Assigned to: _____

**PLAINTIFFS' CLASS ACTION
COMPLAINT FOR VIOLATIONS
OF N.C.G.S. § 75.1 – UNFAIR AND
DECEPTIVE TRADE
PRACTICES AND COMMON
LAW BAD FAITH**

DEMAND FOR JURY TRIAL

Plaintiff, Efren Delgado, on his own behalf and on behalf of a putative class of Allstate insureds, brings this bad faith action to recover for the Defendant's inadequate reimbursement of his medical payments coverage claims. In further support of his claims, the Plaintiff alleges as follows:

INTRODUCTION

1
2 1. This is a putative class action complaint brought on behalf of North
3 Carolina consumers who have not been properly reimbursed for medical bills
4 pursuant to the medical payments coverage of automobile insurance policies with the
5 Defendant and for the unfair and deceptive business practices of the Defendant,
6 Allstate Insurance Company, for their failure to pay the usual fees charged by similar
7 medical providers in the geographical area pursuant to its medical payments
8 coverage.

9 2. For years, the Defendant has improperly reimbursed its insureds for
10 medical bills their insureds incur following a motor vehicle accident rather than the
11 “usual fees” required to be reimbursed according to the policy issued to its insureds.
12 Instead, the Defendant has claimed its reimbursements are based on a rate that
13 providers charge to patients covered by health insurance companies, which rates are
14 set by private contracts between those providers and the health insurance companies,
15 although the reimbursed rates are in many cases even lower than those claimed.

16 3. As a result, Plaintiff and class members, Defendant’s insureds, are required
17 to pay money out of their own pocket to satisfy charges from providers who have not
18 been paid their charged “usual fees” by the Defendant.

PARTIES

19
20 4. The Plaintiff, Efren Delgado, was and is a resident and citizen of
21 Mooresville, Iredell County, North Carolina.

22 5. The Defendant, The Allstate Corporation, is a corporation and is one of the
23 largest insurance providers in the United States, whose Chief Executive Officer is
24 Thomas J. Wilson, and whose principal place of business and headquarters are
25 located at 2775 Sanders Road, Northbrook, Illinois 60062, with full license and
26 privileges to operate, sell and markets insurance products to residents of North
27 Carolina.
28

1 6. The Defendant, Allstate Indemnity Company, is a wholly owned
2 subsidiary of the Defendant, The Allstate Corporation, with a principal place of
3 business and headquarters are located at 2775 Sanders Road, Northbrook, Illinois
4 60062. At all times material, Allstate Indemnity Company is an underwriter of
5 insurance policies for Allstate Corporation and was the underwriter for the insurance
6 policy issued to the Plaintiff, Efren Delgado, and prospective class members.

7 7. The Defendant, Allstate Insurance Company, a subsidiary of Allstate
8 Corporation, with a principal place of business and headquarters located at 2775
9 Sanders Road, Northbrook, Illinois 60062, is a wholly owned subsidiary of Allstate
10 Corporation that acts as an underwriter of Allstate Corporation insurance policies. At
11 all times material, Allstate Insurance Company provided the Plaintiff's insurance
12 policy for the Allstate Corporation and was the holder and processor for the insurance
13 policy issued to the Plaintiff, Efren Delgado and prospective class members.

14 8. At all times material, upon information and belief, Allstate Corporation
15 was the decision making authority with regard to processing and paying medical
16 payments claims pursuant to the Plaintiff's and prospective class members' medical
17 payments coverages.

18 9. The Allstate defendants make no distinction between Allstate Corporation,
19 Allstate Insurance Company or Allstate Indemnity Company (hereafter collectively
20 referred to as "Allstate") in advertising, marketing literature, or communications with
21 insureds related to their policies. Allstate Insurance Company and Allstate Indemnity
22 Company are commonly referred to simply as "Allstate" in communications with
23 insureds.

24 10. Allstate issues a single type of policy to all Allstate insureds in North
25 Carolina, regardless of the underwriter of the Allstate policy, be it Allstate Insurance
26 Company, Allstate Indemnity Company, Allstate Property and Casualty Company,
27 etc.
28

JURISDICTION AND VENUE

11. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2), because the proposed class has more than 100 members, the class contains at least one member of diverse citizenship from Defendants, and the amount in controversy exceeds \$5 million.

12. The Court has personal jurisdiction over the Defendant because the Defendant conducts substantial business in this District, and a substantial amount of the acts and omissions complained of and/or the harm alleged occurred in this District.

13. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a)(1), because a substantial part of the acts and omissions giving rise to this action occurred in this District.

14. The Plaintiff, Efren Delgado, and class members contracted for an insurance policy with Allstate which included “Medical Payments” coverage. The policy required Allstate to “pay reasonable medical expenses incurred for necessary medical and funeral services because of bodily injury.” Reasonable medical expenses was defined in the policy as “Expenses are reasonable only if they are consistent with the usual fees charged by the majority of similar medical providers in the geographic area in which the expenses were incurred for the specific medical service.”

15. On January 31, 2016, the Plaintiff, Efren Delgado, was involved in a motor vehicle collision in Mooresville, North Carolina. Mr. Delgado sustained injuries in the motor vehicle collision for which he received medical treatment.

16. On July 7, 2016, Mr. Delgado submitted medical bills related for treatment from his January 31, 2016 motor vehicle collision in the amount of \$2,300 to his automobile insurance carrier, Allstate, for payment, pursuant to the medical payments provision of his Allstate Indemnity Company insurance policy, which medical payments coverage limits were \$2,000.

17. On August 3, 2016, Allstate issued a payment to the Plaintiff, in the

1 amount of \$1,102.76, an amount less than the charges the Plaintiff incurred as a result
2 of medical treatment from the motor vehicle accident.

3 18. With the payment Allstate sent the Plaintiff, Allstate provided an
4 Explanation of Benefits (EOB) form that explained the reasons Allstate was
5 reimbursing the Plaintiff for less than full amount of his coverage of \$2,000, which
6 included Reason Codes for the reduction of reimbursement rates.

7 19. Reason Code 340 was applied to each of the charges submitted by the
8 Plaintiff to the Defendant, as explained by the EOB provided by the Defendant.
9 Reason Code 340 was explained in a footnote at the bottom of the EOB as the
10 following: "The charges have been priced according to a Coventry owned contract."

11 20. Upon information and belief, Allstate maintains a contract with
12 Coventry, a subsidiary of Aetna Incorporated, a health insurance company, to assign
13 reductions to medical provider charges. Coventry contracts with medical providers
14 to allow Coventry a reduced reimbursement rate for its plan subscribers to satisfy a
15 medical provider charge while guaranteeing the medical provider prompt payment
16 on behalf of its subscribers/plan participants.

17 21. However, at all times material, the Plaintiff and class members, as
18 Allstate insureds, were not covered plan participants under an Allstate sponsored
19 health insurance plan that would afford them discounts on medical provider charges.
20 Therefore, the Plaintiffs and class members were not subject to any discounts
21 guaranteed by health insurance contracts with medical providers, nor was Allstate
22 entitled to any health insurance bargained discounts with medical providers. As a
23 result, the Defendant's reimbursements to Plaintiffs and class members were
24 insufficient to satisfy the Plaintiff's and class members' incurred medical bills.

25 **CLASS ACTION ALLEGATIONS**

26 22. Plaintiffs incorporate all previous allegations as though fully set forth
27 herein.

28 23. Plaintiffs bring this action as a class action pursuant to Rule 23 of the

1 Federal Rules of Civil Procedure.

2 24. Plaintiffs bring this case individually and as a class action pursuant to
3 Rule 23(b)(3) of the Federal Rules of Civil Procedure on behalf of a proposed class,
4 as follows:

5 All North Carolina residents who, at any time prior to the four years
6 following the filing of this action have been charged for medical care;
7 submitted such charges to the Defendant for payment and/or
8 reimbursement pursuant to the medical payments coverage of their
9 policy with Defendant; have received less than full payment for those
charges; and whose medical payments pursuant to the policy have not
exhausted the medical payments coverage limits of the policy.

10 Excluded from the class definition are: (a) Allstate and any of its officers, directors,
11 and employees and any successors or assigns of same; (b) any person who has a
12 pending suit against Allstate for any claims asserted herein or who has compromised
13 such a claim; (c) any current or former person that submitted a medical payments
14 claim with Allstate who subsequently has undergone personal bankruptcy; and (d)
15 any judicial officer or court personnel in this action and their families through the
16 third degree of relationship.

17 25. The members of the class are similarly situated to Plaintiffs.

18 26. The class consists of thousands of persons.

19 27. Common questions of law and fact exist with respect to the class. They
20 include:

- 21 a. Whether Allstate breached their contract with the Plaintiffs;
- 22 b. Whether Allstate acted in bad faith in processing and dealing with
23 Plaintiffs claims handling;
- 24 c. Whether Allstate engaged in unfair and deceptive trade practices;
- 25 d. Whether Allstate applied first party health insurance discounts to
26 which they were not entitled to reimbursement of Plaintiff class
27 members' medical provider charges;
- 28

- e. Whether Allstate provided reimbursement of medical providers charges at less than the usual fee charged by the majority of similar medical providers in the geographic area;
- f. Whether Allstate improperly applied health insurance discounts to first party automobile insurance claims;
- g. Whether Allstate failed to contract with medical providers to satisfy Plaintiff's charges consistent with the usual fee charged;
- h. Whether Allstate provided reimbursement of Plaintiff's medical charges at less than the market rate as set by Centers for Medicare Services;
- i. Whether Allstate failed to reimburse and/or pay Plaintiffs' class members' medical expenses consistent with the terms of class members' automobile insurance policies.

28. The common issues of law and fact of the class members are very similar and are the most significant issues in the case. These common issues predominate over any individual issues, and they can be resolved for all members of the class in one action.

29. Plaintiffs' claims are typical of the claims of the Class Members and the factual and legal bases for the claims are similar.

30. Plaintiffs will fairly and adequately represent the interests of the Class as:

- a. Plaintiff's interests do not conflict with those of the Class Members. Plaintiff does not have any relationship with Allstate except as a consumer of and purchaser of the services as described.
- b. Plaintiff and his attorneys have adequate legal and financial resources to prosecute this action diligently. Plaintiffs' counsel can advance the costs of this action.

1 c. Plaintiffs' attorneys are competent and experienced in class action
2 litigation.

3 31. A class action is the superior method for adjudicating the claims asserted
4 herein, and a class action will provide a fair and efficient method of adjudicating this
5 controversy. The management of this litigation as a class action will not present any
6 undue difficulties.

7 32. The claims asserted herein are most likely "negative value" claims (it
8 would cost more to litigate them individually than could be recovered individually),
9 making prosecution of the claims in separate actions by individual members of the
10 class financially impracticable.

11 33. Separate prosecution of the claims would also be burdensome and
12 inefficient for counsel and the Court.

13 **CLAIMS ARE NOT GOVERNED BY ARBITRATION**

14 34. Allstate maintained several clauses in their policy related to arbitration.

15 35. This matter cannot be subject to any arbitration clause for several
16 reasons.

17 36. The Allstate policy arbitration provision did not constitute a binding
18 contract.

19 37. The claims made against Allstate fall outside of scope of the arbitration
20 provision included in the policy.

21 38. The Arbitration provision is procedurally unconscionable because the
22 Plaintiffs and class members were not offered the ability to negotiate the terms of the
23 policy, the policy was a contract of adhesion, its terms were not clearly
24 communicated, the policy provisions were provided to the Plaintiff and class
25 members only after they contracted for the policy, and their harshness would come
26 as a surprise to reasonable consumers.

27 39. The Arbitration provision is substantively unconscionable because,
28 among other reasons, it: (1) requires consumers to pay for the costs of an arbitration;

1 2) the cost to prosecute the arbitration, even in the event consumers will be
2 successful, will cost more than the amounts in dispute; and 3) the arbitration clause
3 for medical payments coverage differs from the arbitration clause for other coverages
4 of the policy by allowing the Defendant the option to choose arbitration as the
5 governing forum, knowing precisely that consumers will not elect to prosecute a
6 medical payments claim to pursue a negative net value recovery.

7 **I. FIRST CLAIM FOR RELIEF – BREACH OF CONTRACT**

8 **(ALL DEFENDANTS)**

9 40. Plaintiff re-alleges and incorporates herein by reference the allegations
10 set forth above as though fully set forth herein.

11 41. The Plaintiff contracted with the Defendants for an insurance policy that
12 included medical payments insurance coverage to pay the costs of any medical
13 treatment he may need.

14 42. At all times relevant herein, the Plaintiff performed all of the
15 requirements of the contract, including the payment of premiums.

16 43. The Defendants failed to pay for the usual fees of the Plaintiff's
17 necessary medical care, pursuant to the contract.

18 44. In failing to pay the usual fees for the Plaintiff's medical care, the
19 Defendants breached their contract with the Plaintiff to pay his usual fees charged for
20 all necessary medical treatment.

21 45. The plaintiff has been damaged on account of the breach of contract of
22 the Defendants as alleged more fully below.

23 **II. SECOND CLAIM FOR RELIEF – BAD FAITH**

24 **(ALL DEFENDANTS)**

25 46. Plaintiff re-alleges and incorporates herein by reference the allegations
26 set forth above as though fully set forth herein.

27 47. At all times relevant herein, the defendants had a duty to deal fairly and
28 in good faith with its policyholders, including the Plaintiff and prospective class

1 members.

2 48. The Defendants engaged in a refusal to pay the Plaintiff's and
3 prospective class members' claims after the recognition that the Plaintiff's and class
4 members' claims were valid, and the refusal to investigate the claim so as to
5 determine the validity of the claim.

6 49. At all times relevant herein, the Defendants engaged in bad faith in
7 dealing with the Plaintiff's claim as the Defendants' refusal to pay the Plaintiff's and
8 class members' claims were not based on honest disagreement or an innocent
9 mistake.

10 50. At all times relevant herein, the Defendants' conduct in handling the
11 Plaintiff's and class members' claims were outrageous and aggravating conduct
12 which constituted a reckless indifference to plaintiff's and class members' rights,
13 oppression, insult, rudeness, caprice and willfulness in that they:

- 14 a. Misrepresented pertinent facts or insurance policy provisions relating
15 to coverages at issue;
- 16 b. Did not attempt in good faith to effectuate a prompt, fair and equitable
17 settlement of claims in which liability became reasonably clear;
- 18 c. Failed to promptly settle claims in which liability became reasonably
19 clear;
- 20 d. Failed to promptly provide a reasonable explanation of the basis in the
21 policy in relation to the facts or law for denial of the claim or for the
22 offer of compromise settlement;
- 23 e. Failed to promptly and reasonably investigate the claims made by the
24 Plaintiffs and class members.
- 25 f. Failed to acknowledge and act reasonably promptly upon
26 communications with respect to claims arising under insurance
27 policies;
- 28 g. Failed to adopt and implement reasonable standards for the prompt

- 1 investigation of claims arising under insurance policies;
- 2 h. Refused to pay a claim without conducting a reasonable investigation
- 3 based upon all available information;
- 4 i. Failed to affirm or deny coverage of the claim within a reasonable time
- 5 after a proof-of-loss statement had been completed;
- 6 j. Attempted to make claims payments based upon an altered application
- 7 without the knowledge of the insured;
- 8 k. Failed to promptly provide a reasonable explanation for the basis in the
- 9 insurance policy in relation to the facts or applicable law for denial of
- 10 a claim or for the offer of a compromise settlement.

11 51. The plaintiff has been damaged on account of the bad faith of the

12 defendants, as alleged more fully below.

13

14 **III. THIRD CLAIM FOR RELIEF – UNFAIR CLAIMS SETTLEMENT**

15 **PRACTICES**

16 **(ALL DEFENDANTS)**

17 52. Plaintiff re-alleges and incorporates herein by reference the allegations

18 set forth above as though fully set forth herein.

19 53. At all times relevant herein, the defendants sold and handled insurance

20 policies and claims in the State of North Carolina. As such, their activities and

21 practices were governed by the North Carolina Unfair Claims Settlement Practices

22 Act, codified at N.C. G.S. § 58-63-15 et seq.

23 54. The defendants violated the North Carolina Unfair Claims Settlement

24 Practices Act, N.C. § G.S. 58-63-15 in that they:

- 25 a. Provided false information and misrepresentations of pertinent facts
- 26 or insurance policy provisions relating to coverages at issue;
- 27 b. They did not attempt in good faith to effectuate a prompt, fair and
- 28 equitable settlement of claims in which liability has become

1 reasonably clear;

2 c. They failed to promptly settle claims in which liability has become
3 reasonably clear;

4 d. They failed to promptly provide a reasonable explanation of the basis
5 in the policy in relation to the facts or law for denial of the claim or
6 for the offer of compromise settlement;

7 e. They failed to adopt and implement reasonable standards for the
8 prompt investigation of claims arising under insurance policies;

9 f. They refused to pay a claim without conducting a reasonable
10 investigation based upon all available information;

11 g. They compelled the insured to institute litigation to recover amounts
12 due under an insurance policy by offering substantially less than the
13 amounts ultimately recovered in actions brought by such insured;

14 h. They attempted to settle a claim for less than the amount to which a
15 reasonable person would have believed they were entitled;

16 i. They did not attempt in good faith to effectuate prompt, fair and
17 equitable settlements of claims in which liability has become
18 reasonably clear.

19 55. The defendants' violation of the North Carolina Unfair Claims
20 Settlement Practices Act, N.C. G.S. § 58-63-15 et seq., caused the plaintiff the
21 injuries and damages as alleged more fully below.

22
23 **IV. FOURTH CLAIM FOR RELIEF – UNFAIR TRADE OR DECEPTIVE**

24 **PRACTICES**

25 **(ALL DEFENDANTS)**

26 56. Plaintiff re-alleges and incorporates herein by reference the allegations
27 set forth above as though fully set forth herein.

28 57. At all times relevant herein, the defendants sold insurance in the State

1 of North Carolina. As such, their activities and practices were governed by the
2 North Carolina Unfair and Deceptive Trade Practices Act, codified at N.C. G.S. §
3 75-1.1 et seq.

4 58. The Defendants committed an unfair or deceptive act or practice in the
5 sale, claim processing, and claim settlement for the Plaintiff's insurance claim.

6 59. The defendants violated the North Carolina Unfair and Deceptive
7 Trade Practices Act, N.C. G.S. § 75-1.1 in that they:

8 a. Violated the North Carolina Unfair Claims Settlement Practices Act,
9 codified at N.C. G.S. § 58-63-15 et seq.;

10 b. Misrepresented pertinent facts or insurance policy provisions relating
11 to coverages at issue;

12 c. They did not attempt in good faith to effectuate a prompt, fair and
13 equitable settlement of claims in which liability has become reasonably clear;

14 d. They failed to promptly settle claims in which liability has become
15 reasonably clear;

16 e. They failed to promptly provide a reasonable explanation of the basis
17 in the policy in relation to the facts or law for denial of the claim or for the
18 offer of compromise settlement;

19 f. They failed to promptly and reasonably investigate the claims made by
20 the Plaintiff;

21 g. They failed to acknowledge and act reasonably promptly upon
22 communications with respect to claims arising under insurance policies;

23 h. They failed to adopt and implement reasonable standards for the
24 prompt investigation of claims arising under insurance policies;

25 i. They refused to pay a claim without conducting a reasonable
26 investigation based upon all available information;

27 j. They failed to affirm or deny coverage of the claim within a
28 reasonable time after a proof-of-loss statement had been completed;

1 k. They attempted to make claims payments based upon an altered
2 application without the knowledge of the insured;

3 l. They failed to promptly provide a reasonable explanation for the basis
4 in the insurance policy in relation to the facts or applicable law for denial of a
5 claim or for the offer of a compromise settlement.

6 60. The Defendants' sale of the insurance policy and subsequent handling
7 of the Plaintiff's claim for benefits according to the policy affected commerce.

8 61. The defendants' violation of the North Carolina Unfair Claims
9 Settlement Practices Act, N.C. G.S. § 75-1.1, caused the plaintiff the injuries and
10 damages as alleged more fully below.

11 **CONCLUSION**

12 WHEREFORE, Plaintiffs, on behalf of themselves and Class members, pray
13 for relief as follows:

14 A. For an order that this action may be maintained as a class action under
15 Rule 23 of the Federal Rules of Civil Procedure, that each of the above-
16 described classes be certified, that Plaintiffs be appointed Class
17 representatives, and that Plaintiffs' counsel be appointed as counsel for the
18 Class;

19 B. For an order requiring Allstate to pay actual damages in an amount to
20 be determined at trial;

21 C. Under Count I, for actual damages sustained by Plaintiffs and Class
22 Members as a result of violations of their breach of contract including any
23 amounts paid by Plaintiffs for medical expenses not covered by Allstate's
24 medical payments coverage, and punitive damages as the Court deems
25 proper; costs and attorneys' fees;

26 F. Under Count II, for actual damages sustained by Plaintiffs and Class
27 Members as a result of Defendant's bad faith conduct including any amounts
28 paid by Plaintiff to satisfy medical expenses not covered by Allstate's

1 medical payments coverage, and punitive damages as the Court deems
2 proper; costs and attorneys' fees;

3 G. Under Count III, for actual damages sustained by Plaintiffs and Class
4 Members as a result of violations of North Carolina General Statute § 58-63-
5 15 et seq. and for restitution, treble damages, court costs, attorney's fees and
6 any other relief the Court deems just and proper;

7 H. Under Count IV, for actual damages sustained by Plaintiffs and Class
8 Members as a result of violations of North Carolina General Statute § 75.1 et
9 seq. and for restitution, civil penalty of \$5,000 per violation, treble damages,
10 court costs, attorney's fees and any other relief the Court deems just and
11 proper;

12 I. That they be awarded treble and punitive damages, pursuant to the
13 Unfair Trade Practices Act, N.C. G.S. § 75-1.1 and N.C. G.S. §58-63-15 et
14 seq.;

15 J. That the costs of this action be taxed to the defendants; and

16 K. For such other and further relief as the Court deems just and proper.

17 L. On all counts, for an award of the costs of suit incurred herein, including
18 expert witness fees;

19 M. On all counts, for an award of interest, including prejudgment interest, at
20 the legal rate; and

21 N. For such other and further relief as this Court deems just and proper.

22
23 **REQUEST FOR JURY TRIAL**

24 Plaintiffs request a trial by jury on all issues.
25
26
27
28

1 Dated this 10th day of June, 2019.

2 **SCHWABA LAW FIRM, PLLC**

3 s/ Andrew J. Schwaba

4 Andrew J. Schwaba

5 NC Bar No.: 36455

6 212 South Tryon Street

7 Suite 1725

8 Charlotte, NC 28281

9 (704) 370-0220

10 (704) 370-0210 (fax)

11 aschwaba@schwabalaw.com

12 **NICHOLSON LAW FIRM, P.A.**

13 s/ Edward H. Nicholson, Jr.

14 Edward H. Nicholson, Jr.

15 NC Bar No. 36123

16 212 South Tryon Street

17 Suite 1725

18 Charlotte, NC 28281

19 (704) 223-2406 (telephone)

20 nicholsonshumaker@att.net

21 *Attorneys for Plaintiffs*